

**Internal Revenue Service**  
P.O. Box 2508  
Cincinnati, OH 45201

**Department of the Treasury**

Number: **201310042**  
Release Date: 3/8/2013

**Employer Identification Number:**

**Date: December 10, 2012**

**Contact person - ID number:**

**Contact telephone number:**

**LEGEND**

W = Name  
X= Program Name  
Y= Employers Names  
s = Quantity  
v = Quantity

t dollars =Amount

**UIL: 4945.04-04**

Dear

You asked for advance approval of your employer-related scholarship grant procedures under Internal Revenue Code section 4945(g). This approval is required because you are a private foundation that is exempt from federal income tax. You requested approval of your scholarship program to fund the education of certain qualifying students.

**Our Determination**

We approved your procedures for awarding employer-related scholarships. Based on the information you submitted, and assuming you will conduct your program as proposed, we determined that your procedures for awarding employer-related scholarships meet the requirements of Code section 4945(g)(1). As a result, expenditures you make under these procedures will not be taxable.

Also, awards made under these procedures are scholarship or fellowship grants and are not taxable to the recipients if they use them for qualified tuition and related expenses (subject to the limitations provided in Code section 117(b)).

**Description of Your Request**

Your letter indicates you will operate an employer-related scholarship program called X.

The purpose of X is to benefit the children of the employees of Y by paying for tuition, fees, required books and equipment as well as room and board for eligible children. Y is

composed of a few businesses in which your founder and president, W, owns at least a third of the stock. He is also a director in each of the businesses.

You will award a maximum of s new grants per year. All grants will be for t dollars for each year for up to four academic years. You will announce your scholarship program by sending emails to each employee.

Eligible children for the scholarship grants are natural children, stepchildren and legally adopted children of Y's employees. If an employee must be employed for some minimum period by Y, then the minimum period would not exceed three years.

A grant will not be terminated because the recipient's parent terminates employment with Y subsequent to the awarding of the grant regardless of the reason for such termination of employment. If a grant is awarded for one academic year, the recipient must reapply for a grant to continue studies for subsequent years. If a grant is awarded for a period of more than one academic year subject to renewal, the standards for renewal will be based solely upon non-employment-related factors. If the parent met the employment requirement at the time the grant was first awarded, no further employment will be required at the time of each renewal. The course of study for which grants are available will not be limited to those that would be of particular benefit to either you or Y.

Moreover, eligibility will not be related to any other employment related factors such as the employees' position, services or duties. Children of presidents or vice presidents are not eligible to apply. In addition, you will adopt written procedures to ensure no conflicts of interest arise. The written procedures will list the policy of not providing scholarships to persons related to a member of the board or disqualified persons, including substantial contributors and will be made available to all board members, current disqualified persons and substantial contributors and any future disqualified persons or substantial contributors.

Eligible applicants must also meet minimum standards for admission to the educational institution for which grants are available. Students must be enrolled as full-time for initial grants and renewals. A denied applicant does not have the right to apply for a grant in future years.

Potential recipients are required to submit a detailed application including copies of their transcripts by the beginning of the calendar year. Applications will be reviewed the following month and the recipients will be announced a short time later.

Your board will conduct an initial review of all applications to determine if any applicant is related to a member of your board to any disqualified person, including a substantial contributor. Since the board has access to all of the information to determine disqualified persons and/or substantial contributors, your board will make this determination on an individual basis prior to a substantive review of the applications by the selection committee.

Selection of grant recipients will be made by a committee consisting wholly of individuals totally independent and separate from you, W and Y. In that regard a former employee of either you or Y will not be considered totally independent. To the extent feasible, the selection committee will consist of individuals knowledgeable in the education field or persons who otherwise have the background and knowledge to properly evaluate the potential of the applicants. The final members of the selection committee have not yet been determined but you expect it to include individuals who possess graduate degrees, one of whom is a retired professor. Selection of recipients will be based solely on substantial objective standards that are completely unrelated to the employment of the students' parents by Y and their lines of business. Such standards are but not limited to class standing, prior academic performance, performance on tests designed to measure ability and aptitude for higher education and recommendations from instructors or other individuals not related to the potential awardees.

The initial sole criterion that the selection committee will use to select recipients is whether the applicant is in the top % of their graduating high school class. Then the selection committee will rank students by highest-class standing. In the event of a tie, the selection committee will consider other standards as previous defined.

Grants will be awarded solely in the order recommended by the selection committee. The number of grants to be awarded may be reduced but may not be increased from the number recommended by the selection committee. Only the committee may vary the amounts of the grants awarded.

The selection committee will forward to you or Y the names of the proposed recipients for the sole purpose of verifying the eligibility requirements and selection criteria used by the committee in considering the candidates and in making its selection. Any public announcement of the awards, however, will be made by the selection committee or by you and not by Y.

You expect to make payment directly to an accredited school that the recipient will attend and not to the recipient individually. If the funds are distributed to an educational institution, the financial aid or other appropriate office of the receiving educational institution will administer and distribute the funds. The educational institution will be requested to take such actions as may be determined by you including possibly withholding disbursement of funds, if the progress of the recipient is deemed unacceptable by you or the educational institution.

If however, you are required to make a payment to a grant recipient, you will require that the recipient provide a report to ensure that the funds were used for the stated purposes. You will notify the recipient that the funds may be applied to approved expenses at a qualifying education institution. If such a report is not received, you will withhold future funds and will attempt to recover the funds already paid.

The recipients are required to notify you immediately in the event they fail to maintain a satisfactory academic record or fail to meet other requirements sufficient to be classified as a student in good standing or otherwise cease to be enrolled full-time.

The recipients agree to restore to you, immediately upon your request all funds not expended for educational expenses in accordance with the terms and conditions of the grant. The recipients will furnish you with their current address, telephone number and subsequent changes during the life of the grant.

If you discover that any grant funds have been misused by the recipient or anyone else, you will investigate the potential misuse, withhold funds during the investigation and seek recovery of any misused funds.

Scholarships are renewable as long as the recipients remain in the top        of their class. Recipients must notify you of their desire to receive a scholarship for the upcoming school year as well as provide you with proof of their class rank at the end of each academic year. If the recipients are not in the top        of their class, they will not be awarded a grant for the following year.

You will maintain records that include (1) information used to evaluate the qualifications of potential recipients; (2) identification of recipients (including any relationship to you, whether the recipient is a disqualified person, etc); (3) the amount and purpose of each grant; and (4) all recipient reports and other follow-up data obtained in administering your program.

### **Basis for our determination**

The law imposes certain excise taxes on the taxable expenditures of private foundations (Code section 4945). A taxable expenditure is any amount a private foundation pays as a grant to an individual for travel, study, or other similar purposes. However, a grant that meets all of the following requirements of Code section 4945(g) is not a taxable expenditure.

- The foundation awards the grant on an objective and nondiscriminatory basis.
- The IRS approves in advance the procedure for awarding the grant.
- The grant is a scholarship or fellowship subject to Code section 117(a).
- The grant is to be used for study at an educational organization described in Code section 170(b)(1)(A)(ii).

Revenue Procedure 76-47, 1976-2 C.B. 670, sets forth guidelines to be used in determining whether a grant made by a private foundation under an employer-related program to a child of an employee of the particular employer to which the program relates is a scholarship grant that meets the provisions of section 117(a) of the Code (as that section read before the Tax Reform Act of 1986). If a private foundation's program satisfies the seven conditions set forth in Sections 4.01 through 4.07 of Rev. Proc. 76-47 and meets the percentage test described in Section 4.08, the Service will assume the

grants meet the provisions of section 117(a), as that section read before the Tax Reform Act of 1986.

You have agreed that procedures in awarding grants under your program will be in compliance with Sections 4.01 through 4.07 of Rev. Proc. 76-47 (without regard to the amendments to section 117(a) made by the Tax Reform Act of 1986). In particular, the selection of individual grant recipients will be made by a selection committee the members of which are totally independent and separate from the private foundation, the foundation's creator, and the relevant employer. The grants will not be used as a means of inducement to recruit employees nor will a grant be terminated if the employee leaves the employer. The recipient will not be restricted in a course of study that would be of particular benefit to the relevant employer or to the foundation.

Section 4.08 of Rev. Proc 76-47 provides a percentage test guideline. It states in the case of a program that awards grants to children of employees of a particular employee, the program meets the percentage test if either of the following tests are met: the number of grants awarded under that program in any year to such children do not exceed 25 percent of the number of employees' children who were eligible, were applicants for such grants, and were considered by the selection committee in selecting the recipients of grants in that year, or the number of grants awarded under the program in any year to such children does not exceed 10 percent of the number of employees' children who can be shown to be eligible for grants (whether or not they submitted an application) in that year.

If the number of scholarships awarded exceeds the percentage thresholds of Rev. Proc 76-47, the organization may still qualify under facts and circumstances if the primary purpose of the program is to educate recipients in their individual capacities. Such relevant facts and circumstances may include the likelihood that the program may be used for employee recruitment or to retain employees, the independence of the selection committee, standards for scholarship eligibility and selection, limitations on the recipient's choice of course of study, the number of grants available, the number of children of employees who will be eligible for them, the percentage of eligible children of employees applying for the grants who normally receive grants under the program, and whether and how many grants are awarded to individuals who are not children of employees.

You have demonstrated that you meet the requirements of the facts and circumstances test described in Revenue Procedure 76-47. In support of that, you anticipate v individuals will submit applications. You will make no more than s new grants per year based on objective criteria, which are completely unrelated to the employment of the student's parents by Y and its line of businesses. Such standards include prior academic performance, performance on tests designed to measure ability and aptitude for higher education, and recommendations from instructors.

To further substantiate that you meet the facts and circumstances test , you are not funded by Y as in traditional employer scholarship programs but by the individual W who created you more than two decades ago to fund specific scholarship programs at both the university and high school level. X was created as a continuation of these programs. In addition, Y pays competitive salaries based on local market standards and has excellent retention. Furthermore since you will maintain an independent awards committee, will not limit the recipient's choice of study and will make no more than v

awards per year, it is concluded based on facts and circumstances that the primary purpose of your program is to educate recipients in their individual capacities and not as a means for employee retention or as a fringe benefit for Y's employees.

**Other conditions that apply to this determination:**

- This determination only covers the grant program described above. This approval will apply to succeeding grant programs only if their standards and procedures do not differ significantly from those described in your original request.
- This determination applies only to you. It may not be cited as a precedent.
- You cannot rely on the conclusions in this letter if the facts you provided have changed substantially. You must report any significant changes to your program to the Office of Exempt Organizations at:
- You cannot award grants to your creators, officers, directors, trustees, foundation managers, or members of selection committees or their relatives.
- All funds distributed to individuals must be made on a charitable basis and further the purposes of your organization. You cannot award grants for a purpose that is inconsistent with Code section 170(c)(2)(B).
- You should keep adequate records and case histories so that you can substantiate your grant distributions with the IRS if necessary.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Please keep a copy of this letter in your records.

If you have questions, please contact the person listed at the top of this letter.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements